



REPUBLIC OF KENYA



**KENYA LAW**  
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**In re Estate of Solik Arap Kenduiywa alias Simeon Kenduiywa (Decesaed) (Succession Cause 51 of 2021) [2025] KEHC 17261 (KLR) (13 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 17261 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BOMET  
SUCCESSION CAUSE 51 OF 2021  
JK NG'ARNG'AR, J  
NOVEMBER 13, 2025  
IN THE MATTER OF THE ESTATE OF SOLIK ARAP  
KENDUIYWA ALIAS SIMEON KENDUIYWA (**

**BETWEEN**

**RECHO TUEI ..... 1<sup>ST</sup> PETITIONER  
SARAH CHEBET TUEI ..... 2<sup>ND</sup> PETITIONER  
REUBEN KIPRONO TUEI ..... 3<sup>RD</sup> PETITIONER  
HANNA TUEI ..... 4<sup>TH</sup> PETITIONER**

**AND**

**HENRY TOWETT ..... OBJECTOR**

**RULING**

1. In this matter, the dispute between the Petitioners and the Objectors is the distribution of BOMET Municipality 8939 23.

**The Objection.**

2. Through his Affidavit of Protest dated 16<sup>th</sup> April 2024, the Objector stated that the beneficiaries of the deceased's estate sold him part of the deceased's estate being BOMET Municipality 8939 23 measuring 16 feet by 100 feet. That the purchase price was used by the Petitioners to process the present succession cause and its Applications.
3. It was the Objectors case that the Petitioners had assured him that once the succession cause was concluded, they will transfer to him his share of BOMET Municipality 8939 23. That the Petitioners' family in a meeting held sometime in April 2024 passed a resolution that the entire parcel be sold and



the proceeds shared amongst them. It was the Objector's further case that the consent to sell the parcel was illegal and unjustifiable.

4. The Objector stated that he would suffer irreparably if the Petitioners sold the entire parcel as they were incapable of refunding him the purchase price of Kshs 6,700,000 =.
5. Through his written submissions dated 30<sup>th</sup> September 2025, the Objector submitted that he was a creditor to the deceased's estate by virtue of being a purchaser of part of BOMET Municipality 8939 23. That he annexed Sale Agreements and Minutes of a family meeting which showed that he purchased the said parcel with consent from the deceased's beneficiaries.
6. It was the Objector's submission that the Petitioners' family's resolution was against their agreement that they would transfer to him his share of BOMET Municipality 8939 23 after the conclusion of the succession proceedings. That the 4<sup>th</sup> Petitioner signed the undertaking to hand over possession of BOMET Municipality 8939 23 to him. It was the Objector's further submission that he had attempted to sell BOMET Municipality 8939 23 and further that the 4<sup>th</sup> Petitioner had failed to produce any evidence of the Tribunal or court proceedings.
7. The Objector submitted that he was not an intermeddler of the deceased's estate but a creditor.

### **Response**

8. Through her Replying Affidavit dated 10<sup>th</sup> March 2025, the 4<sup>th</sup> Petitioner stated that BOMET Municipality 8939 23 measured 50 feet by 100 feet and the Protestor's claim that he purchased 16 feet by 100 feet were ridiculous as the deceased's estate had not been divided among the beneficiaries. That the Protestor was not a beneficiary of the deceased's estate as per section 29 of the *akn ke act 1972 14 Law of Succession Act*. The 4<sup>th</sup> Petitioner further stated that BOMET Municipality 8939 23 was registered in the name of Solik Arap Kenduiwa (deceased) and none of the beneficiaries had the capacity to dispose off the parcel before the completion of the succession proceedings as it would offend the provisions of section 45 of the *akn ke act 1972 14 Law of Succession Act*.
9. It was the 4<sup>th</sup> Petitioner's case that the Petitioner had filed a suit at the Nakuru Law Courts against the Petitioners being Nakuru CMCC Number 1050 of 2001 and the suit was dismissed. That the Protestor proceeded to the Land Dispute Tribunal and the matter was equally dismissed. It was the 4<sup>th</sup> Petitioner's further case that the Protestor's claim was aimed at complicating the completion of the succession proceedings.
10. The 4<sup>th</sup> Petitioner stated that all the beneficiaries had consented to the mode of distribution and that it would be expedient for this court to distribute the estate amongst the Bonafide beneficiaries and the Protestor could make his claim after the alleged sellers had been bequeathed their portions of the parcel.
11. At the time of writing this Ruling, the 4<sup>th</sup> Petitioner had not filed her written submissions.
12. I have keenly gone through the record, the Affidavit of Protest dated 16<sup>th</sup> April 2024, the 4<sup>th</sup> Petitioner's Replying Affidavit dated 10<sup>th</sup> March 2025 and the Objector's written submissions dated 30<sup>th</sup> September 2025. The only issue for my determination was whether the Objection had merit.
13. It was the Objector's case that he was a creditor in the deceased's estate by virtue of being a purchaser of part of BOMET Municipality 8939 23 and ought to be listed as a beneficiary of the deceased's estate. The 4<sup>th</sup> Petitioner denied that the Objector was a purchaser and stated that the parcel had not been sold or sub-divided.



14. In the Affidavit of Protest dated 16<sup>th</sup> April 2024, the Objector attached a Sale Agreement and Undertaking as “HT1” and “HT2” respectively. The Sale Agreement indicated that the family of deceased i.e. Dinah Tuei, Joel Tuei, Sarah Tuei (2<sup>nd</sup> Petitioner), Rachel Tuei (1<sup>st</sup> Petitioner), Betty Tuei, Reuben Tuei (3<sup>rd</sup> Petitioner), Azariah Tuei, Anna Tuei (4<sup>th</sup> Petitioner) and Jacob Tuei sold 16ft by 100 ft of BOMET Municipality 8939 23 to the Objector for Kshs 400,000 = on 1<sup>st</sup> November 2000. This was before the Grant was confirmed on 29<sup>th</sup> January 2019. Similarly, the Undertaking between the deceased’s family and the Objector indicated willingness by the deceased’s family including all the Petitioners to hand over possession of BOMET Municipality 8939 23 to the Objector on 11<sup>th</sup> December 2023. Additionally, the undertaking identified the Petitioners as sellers.
15. From the analysis above, it is clear to me that there was prima facie evidence that the Petitioners sold BOMET Municipality 8939 23 before the Grant was confirmed. This was contrary to Section 45 of the *akn ke act 1972 14 Law of Succession Act* which provides: -
- (1) Except so far as expressly authorized by this Act, or by any other written law, or by a grant of representation under this Act, no person shall, for any purpose, take possession or dispose of, or otherwise intermeddle with, any free property of a deceased person.
  - (2) Any person who contravenes the provisions of this section shall-
    - (a) be guilty of an offence and liable to a fine not exceeding ten thousand shillings or to a term of imprisonment not exceeding one year or to both such fine and imprisonment; and
    - (b) be answerable to the rightful executor or administrator, to the extent of the assets with which he has intermeddled after deducting any payments made in the due course of administration.
16. Section 51(1) of the *akn ke act 1972 14 Law of Succession Act* provides: -
- No grant of representation, whether or not limited in its terms, shall confer power to distribute any capital assets constituting a net estate, or to make any division of property, unless and until the grant has been confirmed as provided by section 71.
17. I agree with Musyoka J. in the matter of the estate of Veronica Njoki Wakagoto (Deceased) [2013] KEHC 1930 (KLR) where he held: -
- “The effect of this is that the property of a dead person cannot be lawfully dealt with by anybody unless such person is authorized to do so by the law. Such authority emanates from a grant of representation, and any person who handles estate property without authority is guilty of intermeddling. The law takes a very serious view of intermeddling and makes it a criminal offence.”
18. Flowing from the above, it is my finding that the Petitioners intermeddled with the deceased’s estate by selling part of BOMET Municipality 8939 23 without the requisite legal authority.
19. That said, I am alive to the dispute regarding the ownership of BOMET Municipality 8939 23. The Objector is at liberty to approach this court for consideration as beneficiary creditor of the deceased’s estate under section 66 of the Succession Act after he has determined or regularized his ownership status of BOMET Municipality 8939 23. He can only do so in the proper forum being the Environmental and Land Court as this court is not clothed with such jurisdiction. The primary duty



of this court is to distribute the free estate of a deceased. In the case of re Estate of Julius Ndubi Javan (Deceased) [2018] KEHC 8523 (KLR) Gikonyo J. held: -

“The primary duty of the Probate Court is to distribute the estate of the deceased to the rightful beneficiaries. As of necessity, the estate property must be identified. Thus, where issues of ownership of the property of the estate are raised in a succession cause, they must be resolved before such property is distributed. And that is the very reason why rule 41(3) of the Probate and Administration Rules was enacted so that claims which are prima facie valid should be determined before confirmation.”

20. I am in total alignment with re Estate of Stone Kathuli Muinde (Deceased) [2016] KEHC 3725 (KLR) where the court held that: -

“With regard to the assets, one of the questions that may present itself would be the ownership of the assets presented as belonging to the deceased. An outsider may claim that the property does not form part of the estate and therefore it need not be placed on the probate table. The resolution of such questions do not necessitate joinder into the cause of the alleged owner to establish ownership. It is not the function of the probate court to determine ownership of the assets alleged to be estate property. That jurisdiction lies elsewhere.

Such claims to ownership of alleged estate property, as between the estate and a third party, should be resolved through the civil process in a civil suit properly brought before a civil court in accordance with the provisions of the *akn ke act 1924 3 Civil Procedure Act* and the Civil Procedure Rules. This could mean filing suit at the magistrates’ courts, or at the Civil or Commercial Divisions of the High Court, or at the Environment and Land Court. If a decree is obtained in such suit in favour of the claimant, then such decree should be presented to the probate court in the succession cause so that that court can give effect to it”. (Emphasis mine)

21. In the end and in the interests of justice, I make the following orders: -

- I. The Objection dated 16<sup>th</sup> April 2024 is allowed.
- II. This being an old matter, the proceedings are stayed for 90 days pending the determination of the ownership status of BOMET Municipality 8939 23.
- III. The Objector is at liberty to move this court after regularizing his ownership status.
- IV. There will be no orders as to costs.

**RULING DELIVERED, DATED AND SIGNED AT BOMET THIS 13<sup>TH</sup>  
DAY OF NOVEMBER, 2025.**

.....  
**Hon. JULIUS K. NG'ARNG'AR**  
**JUDGE**

Ruling delivered in the presence of:  
Siele Susan (Court Assistants).  
C. Koech for Petitioners



Koske for Objector

